

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
All Actions

MDL No. 2419  
Master Docket No.: 1:13-md-2419-RWZ

Honorable Rya W. Zobel

**PLAINTIFFS' STEERING COMMITTEE'S AMENDED MOTION FOR  
LEAVE FOR ENTRY OF QUALIFIED PROTECTIVE ORDER**

The Plaintiffs' Steering Committee ("PSC") brings this amended motion for entry of the attached qualified protective order (the "Amended Proposed Order") to aid the disbursement of funds to victims of the 2012 fungal meningitis outbreak .

Specifically, on May 20, 2015 (the "Confirmation Date") the United States Bankruptcy Court for the District of Massachusetts, Eastern Division in the New England Compounding Pharmacy's Chapter 11 bankruptcy proceeding, Case No. 12-19882 (the "Bankruptcy Proceeding") entered an order, dated May 20, 2015 (the "Confirmation Order"), confirming the Third Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. (the "Plan") filed jointly by Paul D. Moore, in his capacity as Chapter 11 Trustee, and the Official Committee of Unsecured Creditors. The Plan establishes a claims process and that the National Settlement Administrator and Appeals Administrator (as defined in the Confirmation Order) may use information from state department of health lists in the administration of the claims process as set forth in the Plan. Importantly, this information produced by this state agency in accordance with the Proposed Order will only be accessible to the Settlement Administrator and Appeals Administrator and no other party may access this information under the Amended Proposed

Order.

Accordingly, the PSC respectfully requests that the Court enter the Amended Proposed Order and allow information gathered by the Maryland Department of Health and Mental Hygiene to be accessed by the Settlement Administrator and the Appeals Administrator in the claims process.

The PSC has consulted with the Maryland Department of Health and Mental Hygiene, which consents to the Amended Proposed Order.

Dated: October 13, 2015

Respectfully submitted,

/s/ Kimberly A. Dougherty  
JANET, JENNER & SUGGS, LLC  
31 St. James Avenue, Suite 365  
Boston, MA 02116  
Telephone: (617) 933-1265  
[kdougherty@myadvocates.com](mailto:kdougherty@myadvocates.com)

*Plaintiffs' Steering Committee*

Thomas M. Sobol  
Kristen Johnson  
HAGENS BERMAN SOBOL SHAPIRO  
LLP  
55 Cambridge Parkway, Suite 301  
Cambridge, MA 02142  
Telephone: (617) 482-3700  
Facsimile: (617) 482-3003  
tom@hbsslaw.com  
kristenj@hbsslaw.com

*Plaintiffs' Lead Counsel*

Elizabeth J. Cabraser  
Mark P. Chalos  
Annika K. Martin  
LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
150 Fourth Avenue North, Suite 1650

Nashville, TN 37219-2417  
Telephone: 615.313.9000  
Facsimile: 615.313.9965  
ecabraser@lchb.com  
mchalos@lchb.com  
[akmartin@lchb.com](mailto:akmartin@lchb.com)

*Federal/State Liaison*

Marc E. Lipton  
LIPTON LAW  
18930 W. 10 Mile Road  
Southfield, MI 48075  
Telephone: (248) 557-1688  
Facsimile: (248) 557-6344  
marc@liptonlawcentercom

Patrick T. Fennell  
CRANDALL & KATT  
366 Elm Avenue, S.W.  
Roanoke, VA 24016  
Telephone: (540) 342-2000  
pfennel@crandalllaw.com

Mark Zamora  
ZAMORA FIRM  
6 Concourse Way, 22nd Floor  
Atlanta, GA 30328  
Telephone: (404) 451-7781  
Facsimile: (404) 506-9223  
[marc@markzamora.com](mailto:marc@markzamora.com)

J. Gerard Stranch, IV  
Benjamin A. Gastel  
BRANSETTER, STRANCH & JENNINGS  
PLLC  
The Freedom Center, Suite 200  
223 Rosa L. Parks Avenue  
Nashville, TN 37203  
Telephone: (615) 254-8801  
Facsimile: (615) 255-5419  
gstranch@bsjfirm.com  
[beng@bsjfirm.com](mailto:beng@bsjfirm.com)

*Plaintiffs' Steering Committee*

**CERTIFICATE OF SERVICE**

I, Kimberly A. Dougherty, hereby certify that I caused a copy of the foregoing to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Additionally, a copy of this Motion has been served on counsel for the Maryland Department of Health, Claire Pierson, Esq., via electronic mail as follows:  
claire.pierson@maryland.gov.

Dated: October 13, 2015

/s/ Kimberly A. Dougherty  
Kimberly A. Dougherty

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

THIS DOCUMENT RELATES TO:  
All Actions

MDL No. 2419  
Master Docket No.: 1:13-md-2419-RWZ

Honorable Rya W. Zobel

**QUALIFIED PROTECTIVE ORDER FOR THE PRODUCTION OF CERTAIN  
INFORMATION MAINTAINED BY THE MARYLAND STATE DEPARTMENT OF  
HEALTH AND MENTAL HYGIENE**

WHEREAS, the Court recognizes that the Maryland Department of Health and Mental Hygiene, (“DHMH”), investigated the 2012 fungal meningitis outbreak (the “Outbreak”) and maintained certain lists of individuals affected by the Outbreak;

WHEREAS, the Court recognizes that the lists so maintained contain protected health information, individually identifiable health information, and information gathered by and/or on behalf of DHMH, some of which is protected from disclosure pursuant to Md. Code Ann., Health-Gen. §§18-201, 18-202, and 18-205;

WHEREAS, the Court recognizes that medical information about an individual is protected from disclosure pursuant to Md. Code Ann., General Provisions §4-329, except to a person in interest as defined in Md. Code Ann., Gen. Provisions § 4-101(e);

WHEREAS the Court recognizes that, on May 20, 2015 (the “Confirmation Date”), the United States Bankruptcy Court for the District of Massachusetts, Eastern Division in the New England Compounding Pharmacy’s Chapter 11 bankruptcy proceeding, Case No. 12-19882 (the “Bankruptcy Proceeding”) entered an order, dated May 20, 2015 (the “Confirmation Order”),

confirming the Third Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. (the “Plan”) filed jointly by Paul D. Moore, in his capacity as Chapter 11 Trustee, and the Official Committee of Unsecured Creditors.

WHEREAS, the Court recognizes that the Plan establishes a claims process and that the National Settlement Administrator and Appeals Administrator (as defined in the Confirmation Order) may use information from state department of health lists in the administration of the claims process as set forth in the Plan; and

WHEREAS, the Court recognizes that the patient lists maintained by state departments of health will aid the National Settlement Administrator and Appeals Administrator in the administration of the claims process as set forth in the Plan,

IT IS HEREBY ORDERED that:

1. “Personal Health Information,” and “individually identifiable health information” protected under the Health Insurance Portability and Accountability Act of 1996 (hereinafter “HIPAA”) (42 USC §1320d et seq.) and the regulations promulgated thereunder (45 CFR §§160, 164 et seq.), may only be disclosed by the DHMH in this proceeding and shall only be accessed in accordance with this Order. The information requested and/or produced shall be limited to the list maintained by DHMH of the names of patients who have been identified as meeting the Center for Disease Control’s confirmed case definition for the 2012 fungal meningitis outbreak associated with receiving NECC solutions, medications or compounds (the “MD Patient List”). Nothing in this Order is meant to otherwise restrict DHMH’s lawful use and distribution of the MD Patient List.

2. Within 15 days of entry of this Order, DHMH shall transmit the MD Patient List to the Vendor, as defined by the Court's previous Qualified Protective Order, Dkt. No. 191 (the "First Qualified Protective Order").

3. The Vendor shall maintain the MD Patient List in full accordance with the terms of the First Qualified Protective Order and HIPAA.

4. Only the National Settlement Administrator and the Appeals Administrator, as defined in the Confirmation Order shall have access to the MD Patient List and the National Settlement Administrator and the Appeals Administrator shall access the MD Patient List for the sole purpose of facilitating the claims resolution process as outlined in the Plan.

5. DHMH shall be deemed to fall within the safe harbor of HIPAA for court-ordered production of personal health information, 45 C.F.R. § 164.512(e)(1), and similar provisions of State law, and shall have no liability under HIPAA or any other federal or state statute, regulation, or other requirement related to protected health information, for supplying the MD Patient List to the Vendor.

6. Furthermore, because the MD Patient List will only be provided to the Vendor and is only available for review by the National Settlement Administrator and the Appeals Administrator, as defined in the Confirmation Order, the MD Patient List is and will not be a part of this or any other court record. Accordingly, it is unnecessary to seal this record under Md. Code Ann., Health-Gen., §§ 18-201, 18-202, and 18-205. It is also unnecessary to require authorization from persons in interest under Md. Code Ann., General Provisions, §4-329.

7. Nothing in this Order is meant to alter or amend the First Qualified Protective Order, which shall remain in full force and effect.

**So Ordered**

---

Rya W. Zobel  
United States District Court Judge